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STATE FARM FIRE AND CASUALTY COMPANY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

STATE FARM FIRE AND
CASUALTY COMPANY,

Plaintiff,

vs.

MAILE YOUNG and THOMAS
YOUNG,

Defendants.

CASE NO. CV 16-214

(Declaratory Judgment)

**COMPLAINT FOR
DECLARATORY JUDGMENT;
SUMMONS**

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff STATE FARM FIRE AND CASUALTY COMPANY (“State Farm”), by and through its attorneys Tom Petrus & Miller LLC, for its Complaint for Declaratory Judgment against the above-named Defendants, alleges and avers as follows:

PARTIES, JURISDICTION AND VENUE

1. State Farm is an Illinois corporation with its principal place of business in Bloomington, Illinois.
2. Upon information and belief, Defendants MAILE YOUNG (“Maile”) and THOMAS YOUNG (“Thomas”) (collectively, the “Youngs”) are residents and citizens of the State of Hawaii.
3. There is complete diversity of citizenship between the parties, and the amount in controversy herein exceeds \$75,000.
4. State Farm bring this action pursuant to 28 U.S.C. § 1332 and 28 U.S.C. § 2201 asking this Court to determine, as a matter of law, that State Farm has no duty or obligation to defend or indemnify the Youngs with respect to that certain underlying lawsuit, encaptioned *Pacific Heights Homeowners Assoc. v. Thomas C. Young, et al.*, Civil No. 15-1-0011, Circuit Court of the Third Circuit, State of Hawaii (the “Underlying Lawsuit”).

5. There is an actual and continuing controversy between State Farm and the Youngs.

6. All or a substantial portion of the events giving rise to this action occurred within the State of Hawaii.

7. Venue lies in this Court pursuant to 28 U.S.C. § 1391.

THE UNDERLYING LAWSUIT

8. On or about January 20, 2015, the Pacific Heights Homeowners Association (the “Underlying Plaintiffs”) commenced the Underlying Lawsuit against the Youngs and others, in the Circuit Court of the Third Circuit, State of Hawaii.

9. The Underlying Plaintiffs allege in the Underlying Lawsuit that the Youngs and others, individually and as co-trustees of the Hazel Dukelow Revocable Living Trust (collectively, “Defendants”), made certain improvements to Unit A107 (the “Unit”) at the Pacific Heights Town House Condominium I (the “Property”) in violation of Hawaii Law and the declarations and bylaws applicable to the Unit.

10. It is further alleged that the Unit is subject to county building and plumbing code requirements and encumbered by a declaration of condominium property regime and bylaws, which collectively implement limitations and requirements upon Defendants with regards to their respective ownership, control,

maintenance, and improvement of the Units common and limited common elements, which Defendants violated.

11. The Underlying Complaint asserts ten counts against the Youngs. Counts One through Three seek declaratory relief that Defendants' (1) modification of the concrete slab foundation, (2) installation of a propane gas line and tank, and (3) installation of cabinets at the Premises (collectively, the "Modifications") constitute violations of the Association's declaration and bylaws. Counts Four through Six seek declaratory relief that the Modifications violate the Hawaii County Building and Plumbing Codes. Counts Seven through Nine seek injunctive relief mandating Defendants to cease, desist, and remove the Modifications, and restore the Premises to its original condition. Count Ten seeks an award of economic damages arising from Defendants' alleged wrongful conduct as set forth in Counts One through Nine.

THE STATE FARM INSURANCE POLICIES

12. State Farm issued Condominium Unitowners Insurance Policy Number 51-BC-Q958-7 (the "CUP Policy") to the Youngs, which policy insured the Unit described therein as "529 KUKUAU ST UNIT A107 HILO HI 96720-2624." The CUP Policy was in force and effect for the relevant policy period beginning on March 17, 2014, and ending on March 17, 2015.

13. The CUP Policy provides coverage for “personal liability” with limits of \$100,000 per occurrence, and for “damage to property of others” with limits of \$500 per occurrence, as stated in the Policy’s declarations.

14. The CUP Policy was written on State Farm Coverage Form FP-7956, as amended by various endorsements, which provides the following relevant language:

CONDOMINIUM UNITOWNERS POLICY

* * * *

DEFINITIONS

“You” and “your” mean the “named insured” shown in the **Declarations**. Your spouse is included if a resident of your household. “We”, “us” and “our” mean the Company shown in the **Declarations**.

Certain words and phrases are defined as follows:

1. “**association**” means the management body of the unitowners collectively.
2. “**bodily injury**” means physical injury, sickness, or disease to a person. This includes required care, loss of services and death resulting therefrom.

Bodily injury does not include:

* * * *

- c. emotional distress, mental anguish, humiliation, mental distress, mental injury, or any similar injury unless it arises out of actual physical injury to some person.

3. **“business”** means a trade, profession or occupation. This includes farming.
4. **“condominium”** means the condominium, homeowner development, planned unit development, townhouse development, cooperative development, or any similar unit development, governed by the association of all unitowners of which you are a member and in which the **residence premises** is located.
5. **“Declarations”** means the policy **Declarations**, any amended **Declarations**, the most recent renewal notice or certificate, an Evidence of Insurance form or any endorsement changing any of these.
6. **“insured”** means you and, if residents of your household ... your relatives....
7. **“insured location”** means:
 - a. the **residence premises**;
 - b. the part of any other premises, other structures and grounds used by you as a residence. This includes premises, structures and grounds you acquire while this policy is in effect for your use as a residence;
 - c. any premises used by you in connection with the premises included in 7.a. or 7.b.;

* * * *

9. “**occurrence**”, when used in Section II of this policy, means an accident, including exposure to conditions, which results in:

a. **bodily injury**; or

b. **property damage**;

during the policy period. Repeated or continuous exposure to the same general conditions is considered to be one **occurrence**.

10. “**property damage**” means physical damage to or destruction of tangible property, including loss of use of this property. Theft or conversion of property by any **insured** is not **property damage**.

* * * *

12. “**residence premises**” means the described premises shown in the **Declarations**, other structures and grounds which are reserved for your exclusive use and occupancy.

* * * *

SECTION II – LIABILITY COVERAGES

COVERAGE L – PERSONAL LIABILITY

If a claim is made or a suit is brought against an **insured** for damages because of **bodily injury** or **property damage** to which this coverage applies, caused by an **occurrence**, we will:

1. pay up to our limit of liability for the damages for which the **insured** is legally liable; and

2. provide a defense at our expense by counsel of our choice. We may make any investigation and settle any claim or suit that we decide is appropriate. Our obligation to defend any claim or suit ends when the amount we pay for damages, to effect settlement or satisfy a judgment resulting from the **occurrence**, equals our limit of liability.

SECTION II – ADDITIONAL COVERAGES

We cover the following in addition to the limits of liability:

* * * *

3. **Damage to Property of Others.**
 - a. We will pay for **property damage** to property of others caused by an **insured**.
 - b. We will not pay more than the smallest of the following amounts:
 1. replacement cost at the time of loss;
 2. full cost of repair; or
 3. \$500 in any one **occurrence**.
 - c. We will not pay for **property damage**:
 1. if insurance is otherwise provided in this policy;
 2. caused intentionally by an **insured** who is 13 years of age or older;

3. to property, other than a rented golf cart, owned by or rented to an **insured**, a tenant of an **insured**, or resident in your household....

* * * *

SECTION II – EXCLUSIONS

1. Coverage L and Coverage M do not apply to:

- a. **bodily injury or property damage:**

1. which is either expected or intended by the **insured**; or
2. which is the result of willful and malicious acts of the **insured**;

- b. **bodily injury or property damage** arising out of **business** pursuits of any **insured** or the rental or holding for rental of any part of any premises by any **insured**...; [or]

* * * *

- j. liability assumed by any **insured** under any contract or agreement to pay special assessments levied against the **condominium** owners by the **association** in accordance with the governing rules of the **condominium**....

* * * *

2. Coverage L does not apply to:

* * * *

- b. **property damage** to property currently owned by any **insured**;
- c. **property damage** to property rented to, occupied or used by or in the care of any

insured, including property of the **condominium**. This exclusion does not apply to **property damage** caused by fire, smoke or explosion....

* * * *

15. State Farm also issued Personal Liability Umbrella Policy Number 51-BF-A740-5 (the “PLUP Policy”) to the Youngs for the relevant policy period beginning on July 7, 2014, and ending on July 7, 2015.

16. The PLUP Policy provides excess coverage for “personal liability” with limits of \$1,000,000 per occurrence, as stated in the Policy’s declarations.

17. The PLUP Policy was written on State Farm Coverage Form FP-7950.2, as amended by various endorsements, which provides the following relevant language:

PERSONAL LIABILITY UMBRELLA POLICY

* * * *

DEFINITIONS

We define the words and phrases listed below. Defined words and phrases are printed in bold text, and apply throughout the policy. These definitions apply to the singular, plural, and possessive forms of these words and phrases.

* * * *

2. “**bodily injury**” means physical injury, sickness, or disease to a person. Including death resulting therefrom.

Bodily injury does not include:

* * * *

c. emotional distress, mental anguish, humiliation, mental distress, mental injury, or any similar injury unless it arises out of actual physical injury to some person; or

d. **personal injury.**

3. “**business**” means a trade, profession or occupation, including farming.

* * * *

6. “**insured**” means **you** and **your relatives** whose primary residence is **your** household....

7. “**loss**” means:

a. an accident, including accidental exposure to conditions, which first result in **bodily injury** or **property damage** during the policy period. Repeated or continuous exposure to the same general conditions is considered to be one **loss**; or

b. the commission of an offense which first results in **personal injury** during the policy period. A series of similar or related offenses is considered to be one **loss**.

8. “**personal injury**” means injury other than **bodily injury** arising out of one or more of the following offenses:

a. false arrest, false imprisonment, wrongful eviction, wrongful detention of a person;

b. abuse of process, malicious prosecution;

- c. libel, slander, defamation of character; or
- d. invasion of a person's right of private occupancy by physically entering into that person's personal residence.

10. **"property damage"** means physical damage to or destruction of tangible property, including loss of use of such property.... Theft or conversion of property by any **insured** is not **property damage**.

* * * *

13. **"required underlying insurance"** means the following types of insurance policies when shown on the declarations page:

* * * *

- c. **"Personal Residential Liability"** means **your** policy which provides coverage for liability arising out of the ownership maintenance or use of a premises as **your** residence.

* * * *

- e. **"Residential Rental Liability"** means **your** policy which provides coverage for liability arising out of the ownership, maintenance or use of **your** residential rental property which is occupied by others.

* * * *

14. **"retained limit"** means the sum of:

- a. the amount paid or payable by any other insurance policy for the **loss**;
- b. the amount the insured is required to pay for the loss as provided in the MAINTAINING

REQUIRED UNDERLYING INSURANCE
section of this policy; and

- c. the amount shown on the declarations page as the “Self-Insured Retention”. This amount only applies if an insured has no **required underlying insurance** or an insured’s **required underlying insurance** does not provide any coverage for the **loss**.

15. “**you**” and “**your**” mean the person or persons shown as “Named Insured” on the declarations page. If a named insured shown on the declarations page is a human being then **you** and **your** includes the spouse of the first person listed as a named insured if the spouse resides primarily with that named insured.

16. “**we**”, “**us**” and “**our**” mean the Company shown on the declarations page.

* * * *

COVERAGES

COVERAGE L – PERSONAL LIABILITY

If a claim is made or suit is brought against an **insured** for damages because of a **loss** for which the **insured** is legally liable and to which this policy applies, **we** will pay on behalf of the **insured**, the damages that exceed the **retained limit**. The most **we** will pay for such **loss** is the Coverage L Limit of Liability, as shown on the declarations page, regardless of the number of **insureds** who may be liable, claims made, or persons injured.

Defense

If a suit is brought against any **insured** for damages because of a **loss** to which this policy applies, **we** will provide a defense to the **insured** at **our** expense by counsel of **our** choice when the basis for the suit is a **loss** that is not covered by any other insurance policy but is covered by this policy. **We** have no duty to defend any claim or suit after **we** tender, deposit in court, or pay the amount due under this policy.

Our Rights

We have the right to:

- a. investigate, negotiate and settle any claim or suit that **we** decide is appropriate;
- b. defend the **insured** in any claim or suit, by counsel of **our** choice; and
- c. appeal any award or legal decision.

* * * *

EXCLUSIONS

There is no coverage under this policy for any:

14. **bodily injury or property damage** which is:

- a. either expected or intended by the **insured**;
- or
- b. the result of any willful and malicious act of the **insured**;

* * * *

17. **personal injury** when the **insured** acts with specific intent to cause any harm;
18. **property damage** to ... property owned by any **insured** on the date of loss....
19. liability imposed on or assumed by any **insured** through any unwritten or written agreement;

* * * *

CONDITIONS

* * * *

8. **Joint and Individual Interests.** When there are two or more named insureds, each acts for all to cancel or change the policy.

* * * *

CLAIM FOR DECLARATORY RELIEF

18. State Farm realleges and incorporates herein by reference the allegations in Paragraphs 1 – 17 of the Complaint.

19. The claims asserted against the Youngs in the Underlying Lawsuit are not for “bodily injury” or “property damage” caused by an “occurrence” and/or for “personal injury” caused by an “offense”, and thus are not covered under the CUP Policy and/or the PLUP Policy (collectively, the “Policies”).

20. Coverage for the claims asserted against the Youngs in the Underlying Lawsuit is precluded by one or more of the exclusions set forth in the Policies, as described above.

Wherefore, State Farm prays for relief as follows:

A. For a binding declaration that State Farm has no duty to defend and/or indemnify the Youngs under the Policies for the claims asserted against them in the Underlying Lawsuit, or for any claims that may arise out of the subject matter of the Underlying Lawsuit.

B. For such other relief as the Court may deem appropriate under the circumstances.

DATED: Honolulu, Hawaii, May 3, 2016.

/s/Ian A. Nishi

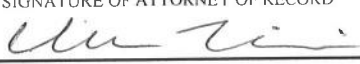
RICHARD B. MILLER
PATRICIA KEHAU WALL
IAN A. NISHI

Attorneys for Plaintiff
STATE FARM FIRE AND CASUALTY
COMPANY

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS STATE FARM FIRE AND CASUALTY COMPANY (b) County of Residence of First Listed Plaintiff <u>Illinois</u> (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorney's (Firm Name, Address, and Telephone Number) Richard B. Miller, Ian A. Nishi, Tom Petrus & Miller, LLC, 1164 Bishop St., Ste 650, Honolulu, HI 96813, Tel No. (808) 792-5800		DEFENDANTS MAILE YOUNG and THOMAS YOUNG County of Residence of First Listed Defendant <u>Hawaii</u> (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known)																									
II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)		III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only) <table style="width:100%; border: none;"> <tr> <td style="width: 30%;"></td> <td style="width: 10%; text-align: center;">PTF</td> <td style="width: 10%; text-align: center;">DEF</td> <td style="width: 50%;"></td> <td style="width: 10%; text-align: center;">PTF</td> <td style="width: 10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>			PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input checked="" type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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V. ORIGIN (Place an "X" in One Box Only) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify) <input type="checkbox"/> 6 Multidistrict Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment																											
VI. CAUSE OF ACTION		Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>28 U.S.C. Section 1332 and 2201 (Diversity)</u> Brief description of cause:																									
VII. REQUESTED IN COMPLAINT:		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No																									
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